## THE DRED SCOTT CASE.

THE OPINION OF MR. JUSTICE CURTIS.

Delivered in the Supreme Court of the United States at Washington, on Saturday, March 7, 1857.

MR. JUSTICE CURTIS.-I dissent from the opinion penounced by the Chief-Justice and from the jodg-ment which the majority of the Court think it proper to render in this case. The plaintiff alleged in his declaration that he was a citizen of the State of Mis-souri, and that the defendant was a citizen of the State of New-York. It is not doubted that it was necessary to make each of these allegations to sustain the juris-diction of the Circuit Court. The defendant denied, by a plea to the jurisdiction, either sufficient or insuffielent, that the plaintiff was a citizen of the State of Miscouri. The plaintiff demurred to that plea. The Grenit Court arjunged the plea insufficient, and the first question for our consideration is, whether the sefficiency of that plea is before this Court for judg-

mest spon this writ of error.

The true questi n is, not what either of the partie may be allowed to do, but whether this Court will firm or reverse a judgment of the Circuit Court on the merits, when it appears on the record, by a plea to
the jurisdiction, that it is a case to which the judicial
power of the United States does not extend. The
course of the Court is, where no motion is made by either party, on its own motion to reverse such a judg-ment for want of jurisdiction, not only in cases where it is shown, negatively, by the record, that jurisdiction does not exist, but even where it does not appear, affirmatively, that it does exist. (Pequignot vs. The affirmatively, that it does exist. (Pequignot vs. The Pernsylvania Railroad Company, 16 How., 104) It nots upon the principle that the judicial power of the United States must not be excited in a case to which it does not extend, even if both parties desire to have it excited. (Cutter vs. Rae, 7 How., 729) I consider, therefore, that when there was a plea to the jurisdiction of the Circuit Court in a case brought here by a writ of error, the first duty of this Court is, swa spoule, if not mowed to it by either party, to examine the sufficiency of that ples, and thus to take care that neither the Circuit Court nor this Court shall use the judicial power of the United States in a case to which the Coastitution and laws of the United States have not extended that power. tended that power.

I proceed, therefore, to examine the plea to the juris

diction.

The plea was as follows:

The plea was as follows:

"And the said John F. A. Sandford, in his own proper person, comes and says that this Court cught not to have or take further cognizance of the action aforesaid, because he says that said cause of action, and seeh and every of them (if any such save accrued to the said Dred Scott), accrued to the said Dred Scott, accrued to the said Dred Scott out of the jurisdiction of the Courts of the State of Muscuri fer that, to wit: The said plaintiff, Dred Scott, is not activen of the State of Muscuri, as alieged in his declaration, because he is a negro of African descent; his sneestors were of pure African blood, and were brought into this court can deal angre slaves; and this the said Sandford is ready to verify. Wherever he pray judgment whether this Court can or will take further cognizance of the action aforesaid."

The plaintiff demurred, and the judgment of the Circuit Court was that the plea was insufficient.

onit Court was that the plea was insufficient.

I curvet treat this plea as a general traverse of the citizenskip alleged by the plaintiff. Indeed, if it were so treated, the plea was clearly bad; for it concludes with a verification and not to the country, as a general

so treated, the plea was clearly bad; for it concludes with a verification and not to the country, as a general traverse should.

The truth is, that though not drawn with the utmost sechuseal accuracy; it is a special traverse of the plaintiff a sligation of citizenship; and was a suitable and proper mode of traverse under the cicumstances. (Stephen on Pl., 183. Ch. on Pl., 620.) And upon a demurrer to this plea the question which arises is, whether the facts that, the plaintiff is a negro, of African descent, whose ancestors were of pure African blood, and were bought into this country and sold as negro elaves, may all be true and yet the plaintiff be a citizen of the State of Missouri, within the meaning of the Constitution and laws of the United States, which confer on citizens of one State that wake to accutizens of another State in the Circuit Couris. Undoubtedly, if these facts, taken together, amount to an allegation that, at the time of action brought, the plaintiff was himself a slave, the plea is sufficient. It has been suggested that the ples, in legal effect, does so aver, because if his ancestors were sold as slaves the presumption is they continued alaves; and, if so, the presumption is, he continued to be a slave to the time of action brought.

I cannot think such presumptions can be resorted to to be let pour selective averages in pleading—aspecially in pleading in abatement, where the utmost certainty and precision are required.

I cannot, therefore, treat this plea as containing an averment that the plaintiff himself was a slave at the time of action brought; and the inquiry recurs, whether the facts that he is of African d scent and that his parance with his own citizensh p in the State of Missouri within

Par's were once slaves are necessarily inconsistent with his own cit zensh p in the State of Mi sourt within the meaning of the Constitution and laws of the United

States.

The first section of the second article of the Constitution uses the language "a citizen of the United States "at the time of the adoption of the Constitution," and one mode of approaching this question is to inquire who were citizens of the United States at the time of

he adoption of the Constitution. Citizens of the United States at the time of the a lop tion of the Constitution can have been no other than estizens of the United States under the confederacy. By the articles of confederation a Government was or By the articles of confederation a Government was organized, the style whereof was: "The United States of America." This Government was in existence when the Constitution was framed and proposed for adoption, and was to be supersided by the new Government of the United States of America, organized under the Constitution. When, therefore, the Constitution of the United States of America, organized under the Constitution. tution speaks of citizenship of the United States existing at the time of the adoption of the Constitution, it must necessarily refer to citizenship under the Government which existed prior to, and at the time of such adoption.

without going into any question concerning the powers of the Confederation to govern the Territory of the United States out of the limits of the States, and come quently to suctain the relation of Govern neat and critizen in respect to the inhabitants of such Ferritory, it may safely be said that the citizens of the several States were citizens of the United States under the Confederation. That Government was simply a Con-States were citizens of the United States under the Confederation. That Government was simply a Confederacy of the several States, possessing a few defined powers over subjects of general convern, each State retaining every power, jurisdiction and right rotes, presely delegated to the United States in Congress assembled. And no power was thus delegated to the Government of the Confederation to act on any question of citizenship or to make any rules in respect thereto. The whole matter was left to stand upon the action and to the natural consequence of sacu action, that the citizens of such State should be citizens of that Confederacy into which that State had entered the Confederacy into which that State had outered the atyle whereof was "the United States of America."

To determine whether any free persons, descended from Africans held in Slavery, were citizens of the United States under the Confederation, and cause querily at the time of the adoption of the Consultation of the Linked. of the United Sates, it is only necessary to know whether any such persons were citizens either of the States under the Confederation at the time of the adop-

n of the Constitution. of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, it is a fact bryond the teach at the most ingenious doubts, that all fire, native-born inhabinants of the States of New free, native-born inhab ands of the States of New Hampshire, Massachusetts, New-York, New Jersey, and North Carclina, though descended from African slaves, were not only citizens of those Sixes, but such of them as had the other necessary qualifications pos-sessed the franchise of electors on equal terms with

preme Court of North Carolina, in the case of The State vs. Manuel, 4 Dev. and Bar. 29, has de-clared the law of that State on this subject, in terms which I believe to be as sound in law in the other States which I have coumerated as it was in North

ording to the laws of this State," save Mr. Justice, in delivering the opinion of the Court, "all human be easten in delivering the opinion of the Court, "all beman beings within it who are not slaves, fail within one or two classes. Whatever distinctions may have existed in the Roman law between citizens and free babbitants, they are unknown to our institutions. Before our Revolution all free persons, but within the dominions of the King of Great British, whatever their color or compication, were native born British subjects; those bern out of his allegiance were alima. Stavery this not exist to England but it did to the British Colories. Slaves were not, in legal parlance, persons, but property. The moment the meapacity—the disqualification of Slavery—was removed, they became persons, and were then either furitish subjects or not British subjects, according as they were or were not been within the allegiance of the British Ring. Upon the

In the State vs. Newcomb, 5 Wedell's R 253 de-eded in 1844, the same Court referred to this case of

the bar and the bench. The case was brought bess by appeal, and was felt in be one of great importance in priorigis. A was actively and case worthy of the principle involved, and within a sarriety and case worthy of the principle involved, and within give it a controlling influence and authority in all questions of a similar character."

An argument from specialistic premises, however well chosen, that the them state of opinion in the Commonwealth of Massachusetts was not consistent with the natural rights of those people who were born on that soil, and that they were not, by the Constitution of 1780 of that State admitted to the condition of citizes, would be reserved with surprise by the people of that State, who know their own policies! history. It is true beyond all controvery that persons of color, descended from African slaves, were, by that Constitution, made citizens of the State, and such of them as have had the necessary qualifications, have held and exercised the elective franchise as citizens from that time to the present (See Com. vs. Aves, 18 Pick. R.).

The Constitution of New-Hampshire conferred the elective franchise upon "every inhabitant of the State having the necessary qualifications," of which color or descent was not one.

The Constitution of New-York gave the right to vote to "every making no distinction between free coloral persons and others.

That of New-Jersey, to "all inhabitants of this colony of full age, who are worth £50 proclamation money, clear estate.

New York, by its Constitution of 1820, required colored creatons to have some qualifications as prerequisites for voting, which white persons need not possess. And New Jersey, by its present Constitution, restricts the right to vote to white male citizens. But these charges sin have no other effect upon the present inquiry, except to show what indeed is indisputable, that be fore they were made no such restriction existed; and colored, in common with white persons, were not only citizens of these Sta's, but entitled to the elec

and colored, in common with white persons, were not only citizens of these Risk's, but entitled to the elective frarchise on the same qualifications as white persons; as they now are in New Hampshire and Massachusetts.

I shall not enter into an examination of the existing epinions of that period respecting the African race nor into any discussion concerning the meaning of those who ascerted in the Declaration of Independence that all men are created equal; that they are endowed by their Creator with certain inaliciable rights; that among these are life, Fiberty and the pursuit of happiness. My own opision is, that a calm comparison of these assertions of universal abstract truths, and of their own individual opinions and acts, would not leave thee men under any reproach of inconsistency; that the great truths they asserted on that solemn occasion, they were ready and anxious to make effectual wherever a necessary regard to circumstances, which no stateman can disregard without producing more evil than good, would allow, and that it would not be just to them nor true in itself, to allege that they then interested to say that the Creator of all men had endowed the white race, exclusively, with the great natural rights which the Declaration of Independence asserts. But this is not the place to vindicate their memory. As I conceive, we should deal here not with such dispute, if there can be a dispute concerning this subject, but with those substantial facts, evinced by the written constitutions of States, and by the notorious practice under them. And they show, in a manner which no but with these substantial facts, evinced by the motorious practice constitutions of States, and by the notorious practice under them. And they show, in a manner which no argument can obscure, that in some of the original thutten States free colored persons before and at the time of the formation of the Constitution, were citizens

of these States.

The fourth of the fundamental articles of the confed-The four in the fundamental experience of these States, paupers, varieties was as follows:

"The free inhabitants of each of these States, paupers, varieties and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States."

The feat that free persons of color were citizens of

all the privileges and immunities of free citizens in the several States."

The fact that free persons of color were citizens of some of the several States, and the consequence that this fourth article of the confederation would have the effect to confer on such persons the privileges, immunities of general citizenship, were not only known to these who framed and adopted those articles, but the evidence is decisive, that the fourth article was intended to have that effect, and that more restricted language, which would have excluded such persons, was deliberately and purposely rejected.

On the 25th of June, 1778, the articles of Confederation by the Congress, the delegates from South Caro-

On the 25th of June, 1778, the articles of Confederation by the Congress, the delegates from South Carolina moved to amend the fourth article, by inserting
af er the word "free" and before the word "inhabitants" the word "white," so that the privileges and
immunities of general citizenship would be secured
only to white persons! Two States voted for the
amendment, eight States against it, and the vote of
one State was divided. The language of the article
stood unchanged, and both by its teams of inclusion,
"free inhabitants," and the strong implication from
its terms of exclusion, "paupers, vagabonds and
fugitives from justice." who alone were excepted, it is
clear, that uncer the Constitution, free colored persons,
of African descent, might be and, by reason of their
being inhabitants of certais States, were entitled to the
privileges and immunities of general citizenship of the
United States!

Did the Constitution of the United States deprive
then or their descendants of citizenship?

Did the Constitution of the United States deprive them or their descendants of citizenship?

That Constitution was ordained and established by the preple of the United States through the action, in each State, of those persons who were qualified by its laws to act thereon in behalf of themselves and all other citizens of that State. It some of the States, as we have seen, colored persons were among those qualified by law to act on this subject. These colored persons were not only included in the body of "the people of the United States," by whom the Constitution was ordained and established, but, in at least five of the States they had power to act, and doubtless did act, by their suffrages, upon the question of its adoption. It would be strarge if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established.

I can find nothing in the Constitution which, propriorizers, deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native born citizens of new State, after its adoption; nor any power, en-

of my State, after its adoption; nor any power, en-abling Congress to disfranchise persons born on the soil of any State and entitled to cutzenship of such State by its Constitution and laws. And my opinion is, that, under the Constitution of the United States, every free there the Constitution of the Cinted State, every free flat State by force of its Constitution or laws, is also a citizen of the United States.

I will preceed to state the grounds of that opinion.

The first section of the second article of the Constitu-tion ares the language, "a natural born cirizen." It thus assumes that citizenship may be acquired by birth. Undensteedly this language of the Constitution was used in reference to that principle of public law, well understood in this country at the time of the adoption of the Constitution, which referred citizen-ship to the place of birth. At the Dichardical of In-dependence, and ever since the received general de-The first section of the second article of the Constitudependence, and ever since, the received general doc-trine has been in conformity with the common law, that fire persons born within either of the colonies were subjects of the King; that by the Declaration of Independence and the consequent acquisition of sovereignty of the States, all such persons ceased to be surjects and became citizens of the several States, except so far as some of them were disfranchised by the legislative power of the States, or availed themselves, of the right to adhere to the British crown

seasonably of the right to adhere to the British crown in the civil contest, and thus to continue British subjects. (Melliain vs. Coxe s Lessee i Cranch, 202.)

The Constitution having recognized the rule, that persons born within the reveral States are citizens of the United States, one of four things must be true:

First, That the Constitution useff has described what native born persons shall or shall not be citizens of the United States; cr.

Second, That it has empowered Congress to do so:

Third, That all free persons, born within the several

Thra, I had all free persons, born within the several States, are citizens of the United States; or, Fourth That it is left to each State to determine what free persons, born within its limits, shall be citizens of such State, and thereby be citizens of the Unit-

If there be such a thing as citizen hip of the United States acquired by birth within the S ates, which the Constitution expressly recognizes, and no one decies, then these four alternatives embrace the entire subject, and it orly remains to select that one which is true.

That the Constitution itself has defined discensing of the University of declaring what persons born within the reveral States shall or shall not be citizens of the

United States will not be pretended. It contains no such declaration. We may dismiss the first alternative as, without doubt, unfounded. without doubt, unfounded. Has it empowered Congress to coact what free per-

sors born within the several States shall or shall not be citizens of the United States?

Before examining the various provisions of the Con-stitution which may relate to this question, it is im-portant to consider for a moment the substantial nature of this inquiry. It is, in effect, whether the Constitution has empowered Congress to create previleges classes within the States who alone can be entitled to the fran-chiese and rewers of cuitemphin of the United States. within the States who alone can be entitled to the franchises and powers of citizenship of the United States. If it be admitted that the Constitution has enabled Congress to declare what free pers ms, burn within the several States, shall be sitizens of the United States, it must at the same time be admitted that it is an unlimited power. If this subject is within the control of Congress, it must depend would so its discretion. For certainly, no limits of that discretion can be found in the Constitution, which is wholly silent concerning it. And the necessary consequence is that the Face all Government may select classes of persons within the several States, who alone can be entitled to the political privileges of citizenship of the United States.

If this power exists, what persons burn within the States may be President of Vice President of the United States or members of either Hones of Congress, or hold

States, or members of either House of Congress, or hold any office, or er joy any privilege, whereof chizensoip any effice, or er joy any privilege, whereof entreassip of the United States is a necessary qualification, must depend solely on the will of Congress. By virtue of it, Be State vs. Manuel, and end: - depend solely on the will of Congress. By virtue of it, "That case underwent a very laborious investigation both by though Congress can grant no like of nobility, they

may create an oligarchy, in whose bands would be con-centrated the entire power of the Federal Government. It is a substantive power, distinct in its nature from all others: capable of affecting not only the relations of the States to the General Government, but of controling the political condition of the people of the United States. Certainly we cught to find this power granted by the Constitution, at least by some necessary inference, be-fore we can say it does not remain to the States or the people. I proceed, therefore, to examine slit the pro-visions of the Constitution, which may have some bear-ing on this subject.

visions of the Constitution, which may have some bearing on this subject.

Among the powers expressly granted to Congress is "the power to establish a uniform rule of naturalization." It is not doubted that this is a power to prescribe a rule for the removal of the disabilities consequent on fereign birth. To hold that it extends further than this would do violence to the meaning of the term naturalization, fixed in the common law (Co. Lit. 8, a. 139 a.; 2 Ves Sen 286; 2 Bl. Com. 293, n.), and in the minds of these who concurred in framing and adopting the Constitution. It was in this sense of conferring on an alien and his issue the rights and powers of a native born citizen, that it was employed in the Declaration of Independence. It was in this sense it was expended in The Federalist (No. 42). In this sense it has been understood by Congress, by the Judiciary (2 Whea. 259, 269; 3 Wash., R. 313, 322; 12 Whea. 277), and by commentators on the Constitution (3 Story's Com. on Con. 1, 3; Rawle on Con. 84, 88; 1 Tucker's Bl. Com. Appx. 253, 259).

Com. Appx. 253, 259).

It appears then the only power, expressly granted

Com. Appx. 253, 259).

It appears then the only power, expressly granted to Congress to legislate concerning citizenship, is confined to the removal of the disabilities of foreign birth. Whether there be anything in the Constitution from which a broader power may be implied, will best be seen when we come to examine the two other alternatives, which are, whether all free persons, born on the sail of the several States, or only such of them as may be citizens of each State respectively, are thereby citizens of the United States. The last of these alternatives in my judgment, contains the truth.

Undoubtedly as has already been said, it is a principle of public law, recognized by the Constitution itself, that birth on the soil of a country, both creates the duties and confers the rights of citizenship. But it must be remembered, that though the Constitution was to form a government, and under it the United States of America were to be one united sovereign nation, to which loyalty and obedience on the one side and from which profection and privileges on the other would be due, yet the several sovereign States, whose people were then citizens, were not only to continue in asistence, but with powers unimpaired, except so far as they were granted by the people to the National Government.

ence, but with powers unimpaired, except so far as they were granted by the people to the National Government:

Among the powers unquestionably possessed by the several States was that of determining what persons should and what persons should not be citizens. It was practicable to confer on the Government of the Union this entire power. It embraced what may, well enough for the purpose now in view, be divided into three parts. First, the power to remove the disabilities of alienage, either by special acts in reference to each individual case, or by setablishing a rule of naturalization to be administered and applied by the Courts, record, determining what persons should enjoy the privileges of citizenship in respect to the internal affairs of the several States; third, what native born citizens should be citizens of the United States.

The first-named power, that of establishing a uniform rule of naturalization, was granted, and here the grant, according to its terms, stopped. Constraing a Constitution containing only limited and defined powers of Government, the argument derived from this definite and restricted power to establish a rule of naturalization, must be admitted to be exceedingly strong. I do not say it is necessarily decivive. It might be controlled by other parts of the Constitution. But when this particular subject of citizen-hip was under consideration, and in the clause specially intended to define the extent of power concerning it, we find a particular part of this entire power separated from the residue, as strong presumption that this is all which is granted; and that the residue is left to the States and to the people. And this presumption is, in my opinion, converted into a certainty by an examination of all such other clauses of the Constitution as touch this subject. I will examine each which can have any possible bearing on this question.

The first clause of the second section of the third article of the Constitution says:

ticle of the Corstitution says:

"The judicial power shall extend to contraversies between a State and citizens of arrother State; between ditrems of different states; between ditrems of the same State, claiming lands under agents of different States; and between States or the citizens thereof and foreign States, citizens or subjects.

I do not think this clause has any considerable bearing upon the particular inquity now under consideration. Its purpose was to extend the judicial power to these certroversies into which local feelings or interests might enter, as to disturb the course of justice or give rise to suspicious that they had done so; and thus possibly give occasion to jealousy or ill-will between different States, or a particular State and a foreign nation. At the same time I would remark in passing, that it has rever been held I do not anow that it has ever been held I do not anow that it has ever been held I do not anow that it has ever been held I do not anow that it has ever of the Judiciary act of 1789, passed in pursuance of it, who was not a citizen of the United States. But I have referred to the clause, only because it is one of the places where citizenship is mentioned by the Constitution. Whether it is entitled to sny weight in this inquiry or not, it refers only to citizenship of the saveral States. It recognizes that, but it does not recognize citizenship of the United States as something distinct therefrom.

As has been said the purpose of this clause did not recognize in the same that the entitled to states, even if that were something distinct from citizenship of the several States, in the contemplation of the Constitution. This can not be said of other clauses of the Censtitution, which I now proceed to refer to "The citizens of each State shall be entitled to all "the privileges and immunities to be enj yed throughter, privileges and immunities to be enj yed throughter.

"ral States." Nowhere else in the Constitution is there any thing concerning a general citizenship: but terr, privileges and in munities to be enj yed throughout the United States, under and by force of the national compact, are granted and secured. In selecting these who are to enj-y these national rights of exitizenship, how are they described. As citizens of each State. It is to them these national rights are secured. The quasification for them is not to be looked for in any provision of the Constitution or laws of the United States. They are to be citizens of the everal States, and, as such, the privileges and immunities of general citizenship derived from and guarantied by the Constitution are to be enjoyed. It would seem that if it had been intended to constitute a class of native born persons within the States who should derive their citizenship of the Enited States from the action of the Federal Government Wie was an occasion for referring referring Government this was an occasion for referring to them. It cannot be supposed that it was the purpose of this article to confirm the privileges and immunities of citizens in all the States upon percess not citizens of the United States. And it was intended to secure these rights only to citizens of the United States how has the Constitution here described such persons Simply as civizens of each State.

But further-though as I shall presently more felly tate—I do not think the erjoyment of the elective tarchise essential to citizenship, there can be no doubt tie one of the chiefest attributes of a tizenship under it is one of the chiefest attributes of ottizenship under the Ancrican Constitution and the just and considu-tional possession of the right is decisive estience of citizership. The provisions made by a Constitution on this rubject must, therefore, be looked to as bearing directly on the question what persons are offices under that Constitution; and as being decisive to this extent, that all such persons as are allowed by the Constitution to exercise the elective frarchise, and thus to partici-pate in the Government of the United States must be deemed citizens of the United States. Here, again, the consideration presses itself upon us, that if there was cesigned to be a particular class of asvice bara tersors within the States, deriving their citizenship esse designed to be a particular class of native bara ersons within the States, deriving their citizenship from the Constitution and laws of the United States, from the Constitution and Iswa of the United States, trey should at least have been referred to as three by should at least have been referred to as three by shown the President and I use of Representatives were to be elected, and to whom they should be responsible. Irstead of that, we again find this subject result of the laws of the reveal States. The electors of President are to be appointed in such manner as the Lawleightupe of each State may direct, and the qualifications of electors of Members of the House of Representatives shall be the rame as for electors of the most time rous branch of the State Legislature.

Laying aside, then, the case of aliens, concerning thich the Constitution of the United States has prowhich are consuminon or the career assess has pro-vided, and confirming our view to free persons been within the several States, we find that the Constitution has recognized the general principle of public law that allegisnes and citizen-hipe-pend on the piace of birth; silegiance and citizenship cep nd on the piace of birth; that it has not attempted, practically, to apply this principle by designating the particular clauses of parsons who shall or shall not come under it; that when we turn to the Constitution for an answer to the question, what free persons, bern within the several States, the only answer we can receive from any of its expressions is, the critizens of the several States are to enjoy the privileges and immunities of citizens in every State, and their franchise as electors under the Constitution, depends on their critizens whip in the several States. Add to this, that the Constitution was ordained by the citizens of the several States, that they were the people of the United States, that they were "the people of the Usi ed States, "for whom and whose posterity the Government was ceclared, in the preamble of the Constitution, to be made; that each of them was a citizen of the United the time of the adoption of this Consistation e meaning of those words in that instrument within the meaning of these words in that instrument that by them the government was to be and was in fact organized; and that no power is conferred on the Covernment of the Union to discriminate between them, or to disfraschise any of them. The necessary conclusion is, that those pervers boro within the severnment. expelled in that those persons born within the new eral States who, by force of their respective Constitu-

tiers and laws are citizens of the States, are thereby ellineus of the United States.

It may be proper here to notice some supposed objections to this view of the subject.

It has been often secreted that the Constitution was made exclusively by and for the white race. It has already been shown that in five of the thirteen original States, cokered persons then possessed the elective franchise, and were among those by whom the Constitution was ordained and established. If so, it is not true, in point of fact that the Constitution was made exclusively by the white race, and, that it was made exclusively for the white race, and, that it was made exclusively for the white race is, in my opinion, not only an assumption not warranted by anything in the Constitution, but contradicted by its opening declaration that it was ordained and established by the people of the United States for themselves and their posterity. And as free colored persons were the citizens of five States, and so in every sense part of the people of the United States, they were among those for whom and whose posterity the Constitution was ordained and established.

Again, it has been objected, that if the Constitution has left to the several States the rightful power to determine who of their inhabitants shall be citizens of the

Again, it has been objected, that if the Constitution has left to the several States the rightful power to determine who of their inhabitants shall be citizens of the United States, the States may make aliens citizens. The answer is obvious. The Constitution has left to the States the determination what persons born within their respective limits, shall acquire by birth citizenship of the United States; it has not left to them any power to prescribe any rule for the removal of the disabilities of alienage. This power is exclusively in Congress. It has been further objected that if free colored per-

bilities of alienage. This power is exclusively in Congress.

It has been further objected that if free colored persons, born within a particular State and made citizens of that State by its Constitution and laws, are thereby made citizens of the United States, then, under the second section of the fourth article of the Constitution, such persons would be entitled to all the privileges and inmunities of citizens in the several States; and if so, then colored persons could vote and be eligible to not culy Federal effices, but offices even in those States whose Constitution and laws disqualify colored persons from voting or being elected to effice.

But this position rests upon an assumption which I deem untenable. Its basis is that no one can be dremed a citizen of the United States who is not entitled to etjey all the privileges and franchises which are conferred on any citizens. (See I Lit., Kentucky R. 206). That this is not true, under the Constitution of the United States, seems to me clear.

A naturalized citizen cannot be President of the United States, nor a Senator till after the lapse of nine years, nor a Representative till after the lapse of nine years, nor a Representative till after the lapse of nine years, nor a Representative till after the lapse of seven years from his naturalization. Yef, as soon as naturalized, he is certainly a citizen of the United States. Nor is any inhabitant of the District of Columbia, or of either of the Territories, eligible to the office of Senator or Representative in Congress, though they may be citizens of the United States. So in all of the States, numerous persons, though citizens, cannot vote, or cannot hold office, either on account of their age, or yex, or want of the necessary legal qualifications. The truth is, that citizership, under the Constitution of the United States, is not dependent on the possession of any particular political, or even of all civil rights; and any attempts to define it must lead to error. To what citizens the elective franchise shall

femiles; one may allow all persons above a prescricted age to convey property and transact business; another may exclude married women. But whether native born women or persons under age, or under gaardianship, because insane, er spendtbritis, be excluded from voting, or holding office, or allowed to do so, I apprehend no one will deny that they are citizens of the United States. Besides this clause of the Constitution does not confer on the citizens of one State, in all other States, specific and enumerated privileges and immunities. They are entitled to such as belong to citizenship; but not to such as belong to particular citizens after ded by other qualifications. Psivileges and immunities which belong to certain citizens of a State by reason of the operation of causes other than mere citizenship, are not conferred. Thus, if the laws of a State require, in addition to citizenship of the State, some qualification for office, or the exercise of the elective franchise, citizens of all other States coming this her to reside and not possessing those qualifications centred reprivate gas, not because they are not to be deemed entitled to the privileges of citizens of the State in which they recide, but because they in common with the native born citizens of that State, must have the qual fications prescribed by law for the erjoy ment of such privileges, under its Constitution and laws. It rests with the States themselves so to frame their Constitutions and laws as not to attach a particular privilege or immunity to mere naked citizenship, then it may be claimed by every citizen of each State by force of the Constitution.

And it must be borne in mind that the difficulties which attand the allowance of the claims of colored persons to be citizens of the Constitution.

And it must be borne in mind that the difficulties which attand the allowance of the claims of colored persons to be citizens by that though each State may make them its critzens, they are not thereby made citizens of sech State. Tre language of the C

from the native-born citizenship of the United States distinct from a native-born citizenship of the severa

states. There is one view of this article entitled to consideration in this cornection. It is manifestly copied from the fourth of the Articles of Confederation, with only eight changes of phraseology, which render its meaning more precise, and dropping the clause which excluded paupers, vagabonds and fugitives from justice, probably because these cases could be dealt with uncer the police powers of the States, and a special provision therefor was not necessary. It has been suggested that in adopting it into the Constitution the works "free in habitants" were changed for the word "citizets." An examination of the foliass of expression commonly used in the State papers of that day, and an attention to the substance of this article of the Confederation will show that the words "free inhabitants," as then used, were synonimous with citizens. When the Articles of Confederation were adopted in July, 1778, we were in the midst of the war of the Revolutior, and there were very few persons then embraced in the words free inhabitants who were not born on our roll. It was not a time when many, embraced in the words free inhabitants who were not born on our soil. It was not a time when many, save the children of the soil, were willing to embark their fortunes in our cause; and though there might be an inaccuracy in the uses of words to call free inhabitants citizens, it was then a technical rather than a substituted difference. If we look in o the Caustitutions and S ate papers of that period, we find "the "free inhabitants of these colonies" or the 'free inhabitants of these colonies" or the 'free inhabitants of these whom we should now denominate citizens. The substance and purpose of the article proved it was in the sense it used these words: It secures to the free inhabitants of each State the privileges and immunities of free citizens in every State. It is not exceenable that the States should have agreed to extend the privileges of citizenship to persons not to extend the privileges of citizenship to persons not entitled to ergely the privileges of citizens in the States where they dwelt; that under this article there was a close of persons in some of the States, not citizens, to whem were recured all the privileges and immunities of citizens when they went into other States, and the just conclusion is, that though the Constitution caused just conclusion is, that though the Constitution caused an isacceptacy of language it left the substance of this afficie in the National Constitution the rame as it was in the articles of confederation.

The history of this fourth article, respecting the at-enpt to excude free persons of color from its opera-ics, has been already stated. It is reas nable to con the passes are any was known to those who framed said accepted the Constitution. That, under this fourth smile of Confederation, free per one of color might be chine to the privileges of general citizenship, if otherwise chilled thereto, is clear. When this article was in substance placed in and made part of the Constitution of the United States, with no change in its presence of might be considered by a considered present. lenguage ca culated to anishes the downed persons from its provisions, the presumption is, to say the least, errong that the presumption is, to say the least, errong that the presumption lefter which it was designed to have and oil have under the former government, it was designed to have and should have under the new

to have and old have under the former government, it was designed to have and should have under the new coveriment.

It may be further objected, that if fee colored persers may be citizens of the United States it depends only on the will of a master whether he will emancipate his slave, and thereby make him a citizen. Not so. The master is subject to the will of the State, whether he shall be allowed to emancipate his slave at all; it so, on what conditions; and what is to be the political status of the freed man, depends, not on the will of he master, but on the will of the State, upon which the political status of all its native born inhabit ants depends. Under the Constitution of the United States each State has retained this power of determining the political status of its native born inhabitants, and no exception thereto can be found in the Constitution. And if a master in a slaveholding State should carry his Slave into a Free State and there emancipate him, he would not thereby make him a native born curian of that State and consequently no privileges could be claimed by such emancipated slave as a citizen of the United States. For, shutever powers the States in any exercise to confer privileges of citizenship in persons not born on their soil, the Constitution of the United States case not recognize such

citizens. As bas siready bees said, it recognizes the great principles of public law, that allegiance and citizenship spring from the place of birth. It leaves to the situate the application of that principle to individual cases. It leaves to the situates of each State the power to State. But it does not allow to the State to take permane as lines citizens, or permit one State to take permane as men critizens, or permit one State to take permane as men or or the laws and policy of the State where they were born, make them its citizens, and so citizens of the United States. No such deviation from the great rule of public law was contemplated by the Constitution, and when any such attempt shall be actually made, it is to be met by applying to it those rules of law and those principles of a good faith, which wis be smiticient to depicted it and not in my judgment, by decaying that all the fire native-born inhabitants of a State, who are its citizens under its Constitution and laws, are also citizens of the United States.

It has sometimes been unged that colored persons are shown not be citizens of the United States by the fact that the naturalization laws apply only to white persons. But whether a person, born in the United States, who are not a citizens of persons born in the United States. The under the states of persons born in the United States. The under the states of persons born in the United States. The under the states of persons born in the United States. The under the states of the states of the states and do not affect the states and the states of the states of the states and the states of the states of the states and the states of the states of the states and the states under the constitution has not exclused them. And since that has conferred the power on Congress to naturalize citored aliena, it certainly shows color is not a necessary qualification for citizenship under the Constitution of the United States. It does not even to have of the United States where the states are able-bodied or makes.

States.

In the legislative debates which attended the admission of the State of Miss. uni into the Union this question was agitated. Its result is found in the resolution of Congress of March 5, 1821, for the admission of that State to the Union. The Constitution of Missouri, nu der which that State applied for admission into the Union, provided that it should be the duty of the Legislature "to pass laws to prevent free negroes and "mulattoes from coming to and a tiling in the State, "puder any pretent whatever." One ground of objection to the admission of the State under this Constitution was, that it would require the Legislature to exclude free persons of color, who would be entitled, under the second section of the fourth article of the Constitution, not only to come within the State, but to enjoy there, the privileges and immunities of citizens. The resclution of Congress admitting the State was upon the fundamental condition" that the Constitution of Missouri shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States of this Union shall be exceed from the enjoyment of any of the privileges and immunities to which such citizen is entitled "under the Constitution of the United States." It is true that neither the legislative declaration, nor any timing in the Constitution of laws of Missouri, could confer or ake away any privilege or immunity granted by the Constitution. But it is also true that it expresses the then conviction of the legislative power of the United States. The tendent of the States and some of the States, that free Legroce, as citizens of some of the State, might be entitled to the privileges and immunities of citizens in all the States.

The conclusions at which I nave arrived on this part of the case site:

First: That the free pative-born citizens of each States.

In the legislative debates which attended the admis

of the case sie:

First: That the free pative-born citizens of each

State are citizens of the United States. Second: That as free colored persons born within some of the States are citizens of those States, such persons are also citizens of the United States.

Third: That every such citizen residing in any State, has the right to sue and is liable to be sued, in the Federal Courte, as a citizen of that State in which

he resides.

Fourth: That as the plea to the jurisdiction in this Fourth: That as the pieu to the jurisdiction in this case shows no facts, except that the plaintiff was of African descent and his ancedors were sold as slaves; and as these facts are not inconsistent with his citizenship of the United States, and his residence in the State of Missouri, the plea to the jurisdiction was bad, and the judgment of the Circuit Court, overruling it,

was cerrect
I dissert, therefore, from that part of the opinion of the majority of the Court in which it holds that a per-con of African descent cannot be a citizen of the United States, and I regret I must go further, and dis-sent both from what I deem their assumption of au-thority to examine the constitutionality of the act of Cergress, commonly called the Missouri Compromise act, and the grounds and conclusion announced in

beir opinion. Having first decided that they were bound to consider the sufficiency of the plea to the jurisdiction of the Cir-cuit Court, and having decided that this plea showed that the Circuit Court had not jurisdiction, and conse-quently that this is a case to which the judicial power of the United States does not extend, they have gone to exemine the merits of the case as they appeared on the trial beforethe Court and jury upon the issues joined on the pleas in bar, and so have reached the question of the power of Corpress to pass the act of 1820. On so grave a subject as this, I feel obliged to say, that in my opinion, such an exertion of judicial power trans-cereds the limits of the authority of the Court, as de-scribed by its repeated decisions, and as acknowledged in this opinion of the majority of the Court.

In the course of the majority of the Court.

In the course of that opini in it became necessary to comment on the care of Le Grand vs. Dannell, reported in 2 Peters, R. 664. In that case a bill was filed by one slieged to be a citizen of Maryland, against one seleged to be a citizen of Pennsylvania. The bill stated that the defendant was the sen of a white man by one of his claves, and the defendant's father devised to him critish lands, the filed to a him the contract of t of his claves, and the defendant's father devised to him certain lands, the title to which we put in controversy by the bill. These facts were admitted in the answer, and upon these and other facts the Court made its lettle four ced on the principle that a devise of land by a master to a slave, was by implication also a bequest of his frieden. The facts that the defendant was not only of African descent, but was born a slave, were not only before the Court but entered into the entire substance of its inquiries. The opinion of the majority of my brethern in this case disposes of the case of Lo Grand vs. Damrell, by saying, in substance, that as the fact that the cefendant was born a slave only came before this Court on the hill and answer, it was then

the fact that the cefendant was been a slave only came better this Court on the bid and answer, it was then too late to raise the question of the personal disability of the party and, therefore, that decision is altogether inspiriteable in this sase.

In this I concur. Since the decision of this Court in Livingston vs. Story II Peters, 331, the law has been settled, that when the decisration or bill contains the necessary averments of citizenship, this Court cannot lock at the record to see whether those averments are time, except so far as they are put in issue by a plea to the jurisdiction. In that case the defendant denied by his answer that Mr. Livings't in was a citizen of New-York as he had alleged in the bill. Both parties went into procis. This Court refused to examine those procise, with reference to the personal disability of the into procts. This Court refused to examine those process, with reference to the personal disability of the plaint ff. This is the settled law of the Court affirmer as Sharkerd vs. Graves, 14 Hear 97. Resident of the Court affirmer of the Cour plaint ff. This is the settler law of the Court affirmed so lately as Shepherd vs. Graves, 14 Haw, 27. But I do not understand this to be a rule which the Court may cepart from at its pleasure. If it be a rule, it is a backing on the Court as on the suitors. If it removes from the latter the power to take any objection to the personal cisability of a party alleged by the result to be competent, which is not shown by plea to the jurisdiction, it is because the Court are sociated by the considerable within the scope of the judicial power of the majority of the Court to pass upon any question respecting the plaintiff's citi-

reneblp in Mirsouri, save that raised by the pica to the jurisdiction, and I do not consider any opinion of this Court or any Court binding when expressed on a question not legitimately before it. (Carroll vs. Carroll, 16 How. 275.) The judgment of this Court is that the case is to be dismissed for want of jurisdiction. Into that judgment, according to the rettled course of this Court, nothing appearing after a pica to the merits can enter. A great question of constitutional law, deeply affecting the peace and welfare of the country, is not, in my opinion, a fit subject to be thus reached.

[TO BE CONTINUED.]

## CITY ITEMS.

AMERICAN THEATER .- This establishment, under the management of Meesrs. Davenport & Watkins, has lately reduced its prices, at the same time that it has increased its attractions. Several serviceable additions have been made to the company, and that very excellent actress, Mrs. E. L. Davenport, is now en-rolled as the "leading lady." The policy of the management has been to procure every evening an old and well-tried play, and to follow it by a "sensation" piece of a later date. During the past week have been produced "Fashion," "The Honeymoon" and other standard comedies, and a romantic drams entitied "The Scalp-Hunters," in which both Mr. and Mrs. Davesport appear, and which was dramatized for them by John H. Wiskins, esq., author of "Sa. Mare," "Chanty's Love," &c. This latter play,

The Scalp Hunters," is a melo-drama of the intense high-pressure style, and seems mightily to the taste of those who delight in blood and biszer. We are not at this instant slaughterously disposed, and find it impracticable to give it an extended criticism in our present peaceful humor. A new piece is an erimed for next week, entitled Modern Insan, which is founded upon certain of the prominent events, the later career of Humington the forger. The theater seems to be well patronized, and the audiences certainly cannot complain that they do not get a full equivalent for their money.

AMERICAN MUSEUM.—At this popular place of

amusement has been played for a number of times play, imported expressly for themselves by the man-agers, called "Ruth Oakley." It was first produced in London, where it met with success, and the man-sgers of the Museum have been the first ones to negotiate with the author and bring out the piece in this country from the manuscript of the author, the pieces never having been printed. It is a domestic drama, in three acts, depicting some of the scenes of English come life, with little striving for great sensations or grand and unexpected effects. The plot is very clevout any unreasonable sacrifices of probability. It is well put upon the stage and very nicely acted, the hero and heroize being represented by Mr. C. W. Clarke and Miss E. Mestayer.

The St. Nicholas Society met last evening at the St. Nicholas Hotel, and made arrangements for their Pass Festival, which will be held at one of the large hotels on Broadway, to be selected by the Stewards, on or

about the 15th of April proximo.

The annual ball given by Dodworth's Band on Wednesday night, at the City Assembly Rooms, was a brilliant affair, and passed off with great celat. The attendance was very large-about two thousand persons being present.

SALE OF THE BRICK CHURCH PROPERTY .- Yesterday the famous Brick Church was disposed of by and tien, at the Merchant's Exchange, by Mr. E. H. Led-to Messes. Wesley, Kesp & James for \$270,000, of which sum the city received one-fourth and the church the remainder. Proceedings were subsequently commenced in the Supreme Court to test the validity of the sale, but the complaint was dismissed by Judge Rosecvelt, on the ground that the Court could not interfere until the property should actually be appropriated to "private secular uses." Negotiations were then entered into with the Postmaster-General for the sale of the property, as a site for a Post Office, for \$450 000; but, in consequence of the advice of the late Attorney General of the United States, who reported adversely to the validity of the title which the vendors could give, the sale was not effected. Since the purchase of the property by Mesers. Wesley, Keep & James the endition affixed to it has been removed by a vote of

be Cemmon Council.

The sale yesterday was largely attended. E. H. Ludlow, the auctioneer. amounced that lot No 7 (the end fronting the City Hall), had been sold at private sale for \$100,000. He a'so stated that \$450,000 in cash had been offered for the entire property, but the sale could not be made in consequence of No. 7 having been previously sold. He believed the title was unexceptionable; but if the purchasers she factory, the vendors would refund the money, including auctioneer's fees and other expenses. The proceeds of the sale would be deposited with the New-York Life and Trust Company, and if the title should be disputed the purchase money would be refunded. The lots were

divided as follows:

divided as follows:

No. 1, corner of Park row and Beekman street, 43 feat ou Park row and 79 feet 8 inches on Beekman street.

No. 2, corner of Beekman and Nassau streets, 65 feet on Beekman street and 40 feet on Nassau street, 65 feet on Beekman street and 40 feet on Nassau street.

No. 3, adjoining the last, fronting on Nassau street and Park row, 25 feet 8 inches on Park row, 25 feet on Nassau street.

No. 4, adjoining the last, fronting on Nassau street and Park row, 36 feet 8 inches on Park row, 25 feet on Nassau street and Park row, 26 feet 8 inches on Park row, 25 feet on Nassau street and Park row, 26 feet 8 inches on Park row, 25 feet on Nassau street.

No. 6, adjoining the last, fronting on Nassau street and Park row, 26 feet 2 inches on Park row, 25 feet on Nassau street.

The depth of the last 4 Lots is the average depth.

No. 7, corner of Park row, Sprace and Nassau streets.

They were seld in the following order:

No. 6, started at \$30,000, was knocked down at \$45,-

000 to A. Stone. No. 5 started at \$40,000, and was purchased by J. P. Sherwin for \$49 000.

No 1 set out at \$10,000, and was purchased by A. Stone for \$74,000. No. 2 started at \$50,000, and was bought by the ame purchaser for \$64,000.

3 was started at \$10,000, and sold to Alvah Higgins for \$18,000. No. 4 led off at \$40,000, and was knocked down to Mr. Sherwin for \$46,500.

It was understood that lot No. I was sold to the prorietors of The Daily Times for \$100,000. The total me unt of the real estate is \$436 500 The church, without the bell, was sold to A. Higgins

or \$1.800. The iron railing and coping was sold to be same person for \$900, making the total amount of he sale \$439,000. CITY RAILROADS -The Special Committee of the Board of Aldermen, to investigate complaints against the City Railroads, met again yesterday aftersoon in

Mr. Valentine's office, City Hall, and continued the invertigation, the Fourth Avenue Railroad being the ubject of consideration. The property-owners and esidents on the line of the Fourth avenue and Bowery petition the Common Council to afford some relief from the armoyarce occasioned to their business by the obstructions caused by the large freight and passengerour belonging to the Harlem Railroad Company constantly getting off the track, thereby preventing transit o and from the upper and lower part of the metropolis, erd also from their unwieldy size, cousing much danger to life and limb, and would urge the Common Conneil to adopt some measure by which the same may be entirely and speedily discontinued.

Mr. Close appeared on behalf of the Railroad Comsay, and remarked that the large cars would soon be apped by a new arrangement of the Company, either at Twenty-sixth street or Forty-sixth street, when the principal ground of complaint would cease to exist. The track from Grand street to Fifth street would be put in good order as soon as possible. The New-Haven Company are to stop running below Twentysixth street on the 15th of May, and the Harlem abo the 1st of July, as the new depots for both Companies

will be completed about that period. Mr. De Forrest, residing corner Fourth avenue and the Bowery, said that it was a common occurrence